

House Engrossed

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

## **HOUSE JOINT RESOLUTION 2001**

A JOINT RESOLUTION

APPROVING FORBEARANCE BY THE STATE OF ARIZONA, ACTING THROUGH THE DIRECTOR OF THE ARIZONA DEPARTMENT OF WATER RESOURCES FOR CERTAIN INTENTIONALLY CREATED SURPLUS AND CERTAIN DOMESTIC SURPLUS ON THE COLORADO RIVER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1       Whereas, the State of Arizona maintains a sovereign interest in the  
2 water of the Colorado river, represented by the contract between the United  
3 States of America and the State of Arizona that was executed February 24,  
4 1944 and ratified by the Legislature in Laws 1944, chapter 4; and

5       Whereas, the State of Arizona's rights in the Colorado river were  
6 further confirmed by the decree of the United States Supreme Court in the  
7 matter of Arizona v. California, including the right to divert 2.8 million  
8 acre-feet of Colorado river water for consumptive use in the State of Arizona  
9 in normal years, plus forty-six per cent of any surplus water made available  
10 by the secretary of the interior under the terms of the decree; and

11       Whereas, the secretary of the interior exercises authority with respect  
12 to the management of the Colorado river dams and reservoirs pursuant to the  
13 Boulder canyon project act of 1928, the Colorado river project storage act of  
14 1956 and the Colorado river basin project act of 1968 and other acts  
15 amendatory or supplementary thereto; and

16       Whereas, the secretary of the interior has been determined to have the  
17 authority to declare surplus conditions in the lower Colorado river  
18 mainstream and to make quantities of surplus water available to Colorado  
19 river water contractors under the terms of the decree in Arizona v.  
20 California, and the secretary of the interior has adopted surplus guidelines  
21 and proposes to adopt shortage guidelines; and

22       Whereas, the seven states of the Colorado river basin met and drafted a  
23 proposal for shortage guidelines and conjunctive management of lakes Mead and  
24 Powell that represents a consensus among the representatives of the governors  
25 of all seven states; and

26       Whereas, the secretary of the interior is expected to publish in the  
27 Federal Register a notice of the department of the interior's record of  
28 decision on shortage guidelines and conjunctive management of lakes Mead and  
29 Powell incorporating the concepts proposed by the seven states of the  
30 Colorado river basin by the end of 2007; and

31       Whereas, the proposal of the seven states of the Colorado river basin  
32 also provides for a concept known as intentionally created surplus, in which  
33 a state can supplement the lower Colorado river mainstream and then divert  
34 additional lower Colorado river water as surplus; and

35       Whereas, diversion of the intentionally created surplus and domestic  
36 surplus must be consistent with the decree in Arizona v. California,  
37 necessitating a forbearance of rights to intentionally created surplus water  
38 and domestic surplus water among lower division states; and

39       Whereas, the State of Arizona recognizes that benefits to the Colorado  
40 river mainstream accrue to Arizona water users from the supplementing of  
41 river supplies through intentionally created surplus, and no Arizona water  
42 user will be adversely affected by Arizona's forbearance of a portion of the  
43 intentionally created surplus added by another lower division state to the  
44 Colorado river mainstream; and

1       Whereas, the State of Arizona recognizes that benefits to the Colorado  
2 river mainstream accrue to Arizona water users by the elimination of the  
3 ability of California or Nevada to request delivery of partial domestic  
4 surplus water pursuant to the secretary's record of decision of January 16,  
5 2001 for the Colorado river interim surplus guidelines; and

6       Whereas, the forbearance of the State of Arizona's rights to surplus  
7 water for direct delivery domestic use to California or Nevada is required to  
8 receive the benefits of the elimination of partial domestic surplus described  
9 above; and

10       Whereas, the effectiveness of such agreements is dependent on approval  
11 by the Arizona Legislature by concurrent resolution under section 45-106,  
12 Arizona Revised Statutes; and

13       Whereas, the State of Arizona must act both through the Arizona  
14 Legislature and the Governor by this joint resolution to forbear the exercise  
15 of a right accruing to the benefit of the state under the 1944 Colorado river  
16 water contract and the decree in Arizona v. California; and

17       Whereas, it is in the best interest of the State of Arizona to  
18 authorize the director of the department of water resources to enter into  
19 forbearance agreements with lower Colorado river basin entities that further  
20 protect Arizona's interests in the water of the Colorado river in surplus,  
21 normal and shortage years.

22 Therefore

23 Be it resolved by the Legislature of the State of Arizona;

24       1. That, notwithstanding any other provisions of law, the State of  
25 Arizona, by and through the director of the department of water resources,  
26 may forbear its rights to the use of certain quantities of intentionally  
27 created surplus and domestic surplus from the Colorado river that would  
28 otherwise be available for use within the State of Arizona under the 1944  
29 Colorado river water contract and the decree in Arizona v. California, if the  
30 secretary of the interior, in a record of decision concerning lower Colorado  
31 river shortages and conjunctive management of lakes Powell and Mead, adopts  
32 substantially the same concepts as contained in the proposal of the seven  
33 basin states for shortage guidelines and conjunctive management of lakes Mead  
34 and Powell.

35       2. That, notwithstanding any other provisions of law, the director of  
36 the department of water resources, on behalf of the State of Arizona, is  
37 authorized to enter into an agreement in substantially the same form as the  
38 Lower Colorado River Basin Intentionally Created Surplus Forbearance  
39 Agreement to forbear the State of Arizona's rights to certain quantities of  
40 intentionally created surplus and domestic surplus from the Colorado river  
41 that would otherwise be available for use in the State of Arizona under the  
42 1944 Colorado river water contract and the decree in Arizona v. California.

43       3. That if the director of the department of water resources finds  
44 that Arizona water users will not be adversely affected by the forbearance by  
45 Arizona of its right to additional intentionally created surplus, the

1 director of the department of water resources, on behalf of the State of  
2 Arizona, is authorized to enter into additional agreements with lower  
3 Colorado river contractors to forbear additional intentionally created  
4 surplus, in substantially the same form and with substantially the same  
5 conditions as in the agreement authorized in the foregoing paragraph.  
6 4. That this action is being taken in response to unique and  
7 extraordinary circumstances.

**PASSED BY THE HOUSE FEBRUARY 12, 2007.**

**PASSED BY THE SENATE MARCH 1, 2007.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 13, 2007.**

Passed the House February 12, 20 07

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

[Signature]  
Speaker of the House

[Signature]  
Chief Clerk of the House

Passed the Senate March 1, 20 07

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting

[Signature]  
President of the Senate

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

5<sup>th</sup> day of March, 20 07

at 2:01 o'clock P. M.

[Signature]  
Secretary to the Governor

Approved this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 13<sup>th</sup> day of March, 20 07

at 11:10 o'clock A. M.

[Signature]  
Secretary of State

H.J.R. 2001